UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
---X ECF CASE
GOTTLIEB DEVELOPMENT LLC,

08 CV 2416 (DC)

Plaintiff,

-against-

PARAMOUNT PICTURES CORPORATION,

Defendant.
---X

PLAINTIFF'S DECLARATION OF ROBERT FESJIAN IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

ROBERT FESJIAN declares under the penalty of perjury under the law of the United States of America that the following is true and correct to the best of my knowledge:

1. I am manager of the plaintiff and submit this declaration in opposition to defendant's motion to dismiss the Complaint.

2. Since the existence of pinball machines, Gottlieb has always been one of the leading names in the pinball machine business and the Gottlieb trademark has been in continuous use for the last 81 years. As documented on the Internet Pinball Database, www.ipdb.org, over 600 different Gottlieb-brand pinball or pinball-type games were produced from 1927 to the present day.

3. D. Gottlieb & Co. was established by David Gottlieb in 1927 as an arcade game corporation. It produced primarily pinball games, but also produced various other games including pitch-and-bats, bowling games, and, eventually, under its successors, video arcade games as well. Like other manufacturers of the day, D. Gottlieb & Co. first made mechanical pinball games. Then, starting in 1935, it produced electromechanical games, and finally switched over to solid-state or electronic machines starting in the late 1970s. In 1947, D. Gottlieb & Co. was the first company to incorporate flippers on the pinball playfield to give the

player more control over the play of the game. To this day, in many other countries pinball machines are known as “flippers.”

4. Gottlieb has always been known as the Cadillac of pinball machines and was and still is the premier brand of pinball. D. Gottlieb & Co. was acquired from the Gottlieb family by Columbia Pictures Industries in 1977. In 1983, after the Coca Cola Company had acquired Columbia, the pinball assets of D. Gottlieb & Co. were transferred to a new Coca Cola subsidiary, Mylstar Electronics. In 1984, Coca Cola sought to divest itself of Mylstar, which also made video games. Premier Technology purchased Mylstar's pinball assets in October 1984 and continued the manufacture of Gottlieb pinball machines.

5. From its creation in 1984 through cessation of operations in 1996, Premier Technology’s principal product was the classic commercial coin-operated pinball machine produced under the Gottlieb trademark. Premier also sold spare parts and other items under the Gottlieb trademark. Annual sales during the peak years of the early 1990s were in excess of $30,000,000.

6. Since acquiring Premier Technology’s assets in 1996, plaintiff has continued the Gottlieb tradition, primarily through licensing of the Gottlieb copyrights and trademarks to various entities involved in the pinball, video game and computer software industries and selling of Gottlieb spare parts. Gottlieb pinball games are now played not only on pinball machines, but also on stand-alone video games and cartridge-type video game platforms such as Game Cube, Xbox and PSP 2. Gottlieb backglass designs (containing the Gottlieb trademark) from the 1950s through the 1970s are now sold separately as printed artwork by art dealers.

7. Accordingly, plaintiff will be able to prove secondary meaning of the Gottlieb trademark at the appropriate stage of the litigation.

8. Attached hereto as Exhibit 1 is a second-by-second breakdown and analysis of defendant's use of plaintiff's copyrights and Gottlieb trademark during the scene in defendant's movie that contain plaintiff's pinball machine and utilizes such copyrights and trademark.

9. Attached hereto as Exhibit 2 is a true and correct copy of the certificate for the trademark Gottlieb on the Principal Register with registration number 3,288,024 which was obtained from the U.S. Patent and Trademark Office Trademark Document Retrieval database.

Dated: August 1, 2008
Pelham Manor, NY

Robert Fesjian

Analysis of Scene Using Gottlieb® Silver Slugger in "What Women Want"

Time	Shot No.	Backglass % Visible	Approx. Seconds Backglass Visible	Side Cabinet Visible		Comments
37.02	1	100		X		Most of machine visible but not fully in focus; stool in front of copyright legend on cabinet
37.03		100		X		Most of machine visible but not fully in focus; stool in front of copyright legend on cabinet
37.04		20	2	X		Machine moving out of shot
37.05						
37.06						
37.07	2	10				Out of focus
37.08		10	1			Out of focus
37.09						
37.10	3	90				Better focus; Silver Slugger and Gottlieb legible; machine occupies 25% of screen; playfield visible
37.11		60				Better focus; Silver Slugger and Gottlieb legible; machine occupies 25% of screen; playfield visible
37.12		40		X		Playfield visible; attract mode activates
37.13		40		X		Playfield visible; attract mode activated
37.14		40		X		Playfield visible; attract mode activated
37.15		40		X		Playfield visible; attract mode activated
37.16		40	6	X		Playfield visible; attract mode activated
37.17						
37.18						
37.19						
37.20						
37.21						
37.22	4	5		X		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
37.23		5		X		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
37.24		5		X		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
37.25		5	3	X		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
37.26						
37.27						
37.28						
37.29						
37.30						
37.31						
37.32						
37.33						
37.34	5	5		X		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
37.35		5	1	X		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
37.36						
37.37						
37.38	6	5		X		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
37.39		5	1	X		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
37.40						
37.41	7	5		X		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
37.42		5	1	X		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
37.43	8	5		X		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
37.44		5		X		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine

37.45		5		**X**		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
37.46		5	5	**X**		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
37.47						
37.48	**9**	20		**X**		Both machines visible; Silver Slugger directly behind Mel; stool covers copyright legend
37.49		20		**X**		Both machines visible; Silver Slugger directly behind Mel; stool covers copyright legend
37.50		20		**X**		Both machines visible; Silver Slugger directly behind Mel; stool covers copyright legend
37.51		20		**X**		Both machines visible; Silver Slugger directly behind Mel; stool covers copyright legend
37.52		20		**X**		Both machines visible; Silver Slugger directly behind Mel; stool covers copyright legend
37.53		20		**X**		Both machines visible; Silver Slugger directly behind Mel; stool covers copyright legend
37.54		20		**X**		Both machines visible; Silver Slugger directly behind Mel; stool covers copyright legend
37.55		20		**X**		Both machines visible; Silver Slugger directly behind Mel; stool covers copyright legend
37.56		20	8	**X**		Both machines visible; Silver Slugger directly behind Mel; stool covers copyright legend
37.57	**10**	10	1	**X**		Stool covers copyright legend; machine is to left of actor Mark Feuerstein
37.58	**11**	20		**X**		Both machines visible; Silver Slugger directly behind Mel; stool covers copyright legend
37.59		20		**X**		Both machines visible; Silver Slugger directly behind Mel; stool covers copyright legend
38.00		20		**X**		Both machines visible; Silver Slugger directly behind Mel; stool covers copyright legend
38.01		20	3	**X**		Both machines visible; Silver Slugger directly behind Mel; stool covers copyright legend
38.02						
38.03						
38.04	**12**	20		**X**		Both machines visible; Silver Slugger directly behind Mel; stool covers copyright legend
38.05		20		**X**		Both machines visible; Silver Slugger directly behind Mel; stool covers copyright legend
38.06		20		**X**		Both machines visible; Silver Slugger directly behind Mel; stool covers copyright legend
38.07		20		**X**		Both machines visible; Silver Slugger directly behind Mel; stool covers copyright legend
38.08		20		**X**		Both machines visible; Silver Slugger directly behind Mel; stool covers copyright legend
38.09		20		**X**		Both machines visible; Silver Slugger directly behind Mel; stool covers copyright legend
38.10		20		**X**		Both machines visible; Silver Slugger directly behind Mel; stool covers copyright legend
38.11		20		**X**		Both machines visible; Silver Slugger directly behind Mel; stool covers copyright legend
38.12		20	8	**X**		Both machines visible; Silver Slugger directly behind Mel; stool covers copyright legend
38.13						
38.14						
38.15	**13**	10		**X**		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
38.16		10		**X**		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
38.17		10		**X**		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
38.18		10		**X**		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
38.19		10		**X**		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
38.20		10		**X**		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
38.21		10	6	**X**		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
38.22	**14**	10	1	**X**		Stool covers copyright legend; machine is to left of actor Mark Feuerstein
38.23	**15**	10		**X**		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
38.24		10		**X**		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
38.25		10	2	**X**		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
38.26						
38.27						
38.28	**16**	10		**X**		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
38.29		10	1	**X**		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
38.30	**17**	10	1	**X**		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
38.31						
38.32						
38.33						
38.34	**18**	20		**X**		Both machines visible; Silver Slugger directly behind Mel; stool covers copyright legend

38.35		20		**X**		Both machines visible; Silver Slugger directly behind Mel; stool covers copyright legend
38.36		20	2	**X**		Both machines visible; Silver Slugger directly behind Mel; stool covers copyright legend
38.37						
38.38						
38.39	**19**	5	1	**X**		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
38.40				**X**		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
38.41				**X**		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
38.42				**X**		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
38.43				**X**		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
38.44				**X**		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
38.45				**X**		Machine taking up entire background behind Mel Gibson; out of focus, but recognizable as a pinball machine
38.46						
38.47						
38.48						
38.49						
38.50						
38.51	**20**	30		**X**		Both machines visible; Silver Slugger directly behind Mel; stool covers copyright legend
38.52		30	1	**X**		Both machines visible; Silver Slugger directly behind Mel; stool covers copyright legend
38.53						
38.54	**21**	30	1	**X**		Both machines visible; Silver Slugger directly behind Mel; stool covers copyright legend
38.55						
38.56						
38.57						
38.58	**22**	40				Window and 2 machines in background; Gottlieb and Silver Slugger clearly visible
38.59		40				Window and 2 machines in background; Gottlieb and Silver Slugger clearly visible
39.00		40				Window and 2 machines in background; Gottlieb and Silver Slugger clearly visible
39.01		90				Window and 2 machines in background; Gottlieb and Silver Slugger clearly visible
39.02		100	4			Window and 2 machines in background
39.03						
39.04						
39.05	**23**	5		**X**		Window and 2 machines in background
39.06		100		**X**		Window and 2 machines in background; Gottlieb and Silver Slugger clearly visible
39.07		80	2	**X**		Window and 2 machines in background; Gottlieb and Silver Slugger clearly visible
39.08						Part of machine with "Gott" visible
39.09						
39.10						
39.11						
39.12						
39.13						
39.14						
39.15						
39.16						
39.17						
39.18						
39.19	**24**	20		**X**		Stool covers copyright legend; machine is to left of actor Mark Feuerstein
39.20		20	1	**X**		Stool covers copyright legend; machine is to left of actor Mark Feuerstein
39.21						
39.22						
39.23						
39.24						

39.25						
39.26						
39.27	**25**	10	1	**X**		Stool covers copyright legend; machine is to left of actor Mark Feuerstein
39.28		10	1	**X**		Stool covers copyright legend; machine is to left of actor Mark Feuerstein
39.29						
39.30						
39.31						
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39.35						
39.36						
39.37						
39.38						
39.39						
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40.06						
40.07						
40.08						
40.09						
40.10						
40.11						
40.12						
40.13						
40.14	**26**	60		**X**		Window and 2 machines in background; Silver Slugger clearly visible; "lieb" visible; stool covers legend

40.15		60		**X**		Window and 2 machines in background; Silver Slugger clearly visible; "lieb" visible; stool covers legend
40.16		60		**X**		Window and 2 machines in background; Silver Slugger clearly visible; "lieb" visible; stool covers legend
40.17		60	3	**X**		Window and 2 machines in background; Silver Slugger clearly visible; "lieb" visible; stool covers legend
40.18						
40.19						
40.20						
40.21						
40.22						
40.23						
40.24						
40.25						
40.26						
40.27						
40.28	**27**	60		**X**		Window and 2 machines in background; Silver Slugger clearly visible; "lieb" visible; stool covers legend
40.29		60		**X**		Window and 2 machines in background; Silver Slugger clearly visible; "ttlieb" visible; stool covers legend
40.30		60		**X**		Window and 2 machines in background; Silver Slugger clearly visible; "ttlieb" visible; stool covers legend
40.31		60		**X**		Window and 2 machines in background; Silver Slugger clearly visible; "ottlieb" visible; stool covers legend
40.32		60		**X**		Window and 2 machines in background; Silver Slugger clearly visible; "ottlieb" visible; stool covers legend
40.33		60		**X**		Window and 2 machines in background; Silver Slugger clearly visible; "ttlieb" visible; stool covers legend
40.34		60	6	**X**		Window and 2 machines in background; Silver Slugger clearly visible; "ttlieb" visible; stool covers legend
		Total seconds	**74**			

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GOTTLIEB

Word Mark	**GOTTLIEB**
Goods and Services	IC 028. US 022 023 038 050. G & S: Non-gambling, coin-operated amusement-type pinball machines; replacement parts for non-gambling, coin-operated amusement-type pinball machines; arcade-type electronic video games. FIRST USE: 19850208. FIRST USE IN COMMERCE: 19850208
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78847015
Filing Date	March 27, 2006
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	June 19, 2007

Registration Number	3288024
International Registration Number	0901938
Registration Date	September 4, 2007
Owner	(REGISTRANT) Gottlieb Development LLC LIMITED LIABILITY COMPANY NEW YORK 101 Secor Lane, P.O. Box 889 Pelham Manor NEW YORK 10803
Attorney of Record	Jeanette S. Zimmer
Prior Registrations	1403592;1529846;2292766;AND OTHERS
Type of Mark	TRADEMARK
Register	PRINCIPAL-2(F)
Live/Dead Indicator	LIVE